

37 Am. Jur. 2d Fraud and Deceit § 24

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Fraud and Deceit

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II. Elements and Requisites


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§ 24. Action for fraud

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West's Key Number Digest

West's Key Number Digest, [Fraud](#)  3 to 4.5, 26

A.L.R. Library

[Enforceability of Trial Period Plans \(TPP\) Under the Home Affordable Modification Program \(HAMP\)](#), 88 A.L.R. Fed. 2d 331

Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 207](#) (Instructions to jury—Elements of fraud—General form)

Law Reviews and Other Periodicals

Arger and Natarelli, [Support for Dismissal of State Law Based HAMP TPP Cases](#), 2013-JAN Bus. L. Today 1 (2013)

Axelsson and Hutchings, [Mortgage Servicing Developments](#), 68 Bus. Law. 571 (2013)

Chiles and Mitchell, [HAMP: An Overview of the Program and Recent Litigation Trends](#), 65 Consumer Fin. L.Q. Rep. 194 (2011)

Dyer, [Trial Period Plan Creates Mortgage Modification](#), 17 J. Consumer & Com. L. 31 (2013)

Hawes, [Forcing Lenders to Comply with the Home Affordable Modification Program](#), 101 Ill. B.J. 308 (2013)
Jacobs, [Help or HAMP\(Er\)?—The Courts’ Reluctance to Provide the Right to a Private Action under HAMP and its Detrimental Effect on Homeowners](#), 47 Val. U. L. Rev. 267 (2012)
Maxwell, [The 75 Billion Dollar Question: Why is HAMP Not An Entitlement Program?](#), 97 Iowa L. Rev. 1305 (2012)
Parker, [Mending Broken Promises: Allowing Homeowners to Pursue Claims of Promissory Estoppel Against Lenders When Denied Loan Modifications](#), 47 New Eng. L. Rev. 985 (2013)
Sarapinian, [Fighting Foreclosure: Using Contract Law to Enforce the Home Affordable Modification Program](#), 64 Hastings L.J. 905 (2013)

The five traditional elements of fraud, each of which must be established by evidence that is not equally consistent with either honesty or deceit include: (1) a false representation; (2) in reference to a material fact; (3) made with knowledge of its falsity; (4) with the intent to deceive; and (5) on which an action is taken in justifiable reliance upon the representation.¹

To establish a claim for fraud, a plaintiff must show by clear and convincing evidence that the defendant made a false representation of a material fact with knowledge of its falsity, for the purpose of inducing the plaintiff to act thereon, and that the plaintiff reasonably relied upon the representation as true and acted upon it to his or her damage.²

Fraud cannot be predicated upon mistake or negligence, no matter how gross.³

A party’s intent is determined at the time the party made the representation; however, a party’s intent may be inferred by the party’s subsequent acts following the representation.⁴ While an honest, good-faith belief in the truth of a misrepresentation may negate an intent to defraud, a good-faith belief that the victim will be repaid and will sustain no loss is no defense at all;⁵ the intent to repay eventually is irrelevant to the question of guilt for fraud.⁶

Observation:

A cause of action for fraud cannot lie where the plaintiff willingly permits the defendant to deceive the plaintiff.⁷

Practice Tip:

To establish the affirmative defense of fraud, the government must prove by clear and convincing evidence: (1) a misrepresentation of a material fact; (2) knowledge and intent to deceive or a reckless state of mind; (3) justifiable reliance on the misrepresentation by the government; and (4) injury to the government.⁸

CUMULATIVE SUPPLEMENT

Cases:

In order to maintain an action for fraud under Arizona law, a plaintiff must sufficiently plead: (1) a representation, (2) its falsity, (3) its materiality, (4) the speaker's knowledge of its falsity or ignorance of its truth, (5) the speaker's intent that it be acted upon by the recipient in the manner reasonably calculated, (6) the hearer's ignorance of its falsity, (7) the hearer's reliance on its truth, (8) the right to rely on it, and (9) a consequent and proximate injury. [Seikaly & Stewart, P.C. v. Fairley](#), 18 F. Supp. 3d 989 (D. Ariz. 2014).

Under Alabama law, the elements of a prima facie fraud claim are that plaintiff must demonstrate: (1) a misrepresentation of a material fact; (2) made willfully to deceive, recklessly, without knowledge, or mistakenly; (3) that was reasonably relied on by the plaintiff under the circumstances; and (4) caused damage as a proximate consequence. [San Francisco Residence Club, Inc. v. Baswell-Guthrie](#), 897 F. Supp. 2d 1122 (N.D. Ala. 2012).

Pursuant to District of Columbia Law, fraud requires: (1) a false representation, (2) in reference to a material fact, (3) made with knowledge of its falsity, (4) with the intent to deceive, and (5) action taken in reliance upon the representation, (6) which consequently resulted in provable damages. [Council on American-Islamic Relations Action Network, Inc. v. Gaubatz](#), 82 F. Supp. 3d 344 (D.D.C. 2015).

Under Indiana law, the essential elements of common law fraud are: (1) a material representation of past or existing facts which; (2) was false; (3) was made with knowledge or reckless ignorance of its falsity; (4) was made with intent to deceive; (5) was rightfully relied upon by complaining party; and (6) proximately caused injury to complaining party. [Kruse v. GS Pep Technology Fund 2000 LP](#), 897 F. Supp. 2d 769 (N.D. Ind. 2012).

Under Maryland law, to state fraud claim, plaintiff must allege with particularity that: (1) defendant made false statement of fact; (2) defendant knew statement was false or acted with reckless disregard for its truth; (3) defendant made statement for purpose of defrauding plaintiff; (4) plaintiff reasonably relied on false statement, and (5) plaintiff was damaged as result. [Roberson v. Ginnie Mae REMIC Trust 2010 H01](#), 973 F. Supp. 2d 585 (D. Md. 2013).

In Massachusetts, a claim for fraud requires the plaintiff to show that (1) the defendant made a false representation of material fact, (2) with knowledge of its falsity, (3) for the purpose of inducing the plaintiff to act in reliance thereon, (4) the plaintiff relied upon the representation, and (5) the plaintiff acted to his detriment. [Fiorillo v. Winiker](#), 85 F. Supp. 3d 565 (D. Mass. 2015).

In order to establish a cause of action for fraud in Massachusetts, a plaintiff must demonstrate that: (1) the defendant made a false representation of material fact, (2) with knowledge of its falsity, (3) for the purpose of inducing the plaintiff to act in reliance thereon, (4) the plaintiff relied upon the representation, and (5) the plaintiff acted to his detriment. [America's Growth Capital, LLC v. PFIP, LLC](#), 73 F. Supp. 3d 127 (D. Mass. 2014), appeal dismissed, (1st Cir. 15-1432)(June 3, 2015).

To state claim of fraud under Michigan law, plaintiffs must plead facts showing that: (1) defendant made material representation; (2) it was false; (3) when he made it he knew that it was false, or made it recklessly, without any knowledge of its truth, and as positive assertion; (4) he made it with intention that it should be acted upon by plaintiff; (5) plaintiff acted in reliance upon it; and (6) he thereby suffered injury. [PNC Bank, Nat. Ass'n v. Goyette Mechanical Co., Inc.](#), 88 F. Supp. 3d 775 (E.D. Mich. 2015).

To state a claim for fraud under Minnesota law, plaintiff must allege: (1) a false representation by defendant of a past or existing material fact susceptible of knowledge; (2) made with knowledge of the falsity of the representation or made without knowing whether it was true or false; (3) with the intention to induce plaintiff to act in reliance thereon; (4) that the representation caused plaintiff to act in reliance thereon; and (5) that plaintiff suffered pecuniary damages as a result of the reliance. [Zimmerschied v. JP Morgan Chase Bank, N.A.](#), 49 F. Supp. 3d 583 (D. Minn. 2014).

To prevail on a fraud claim in Ohio, a plaintiff must prove these elements: (1) a representation; (2) material to the transaction; (3) made falsely, with knowledge of falsity; and (4) with the intention of misleading another into relying on it; and he or she also must prove (5) justifiable reliance on the representation; and (6) an injury proximately caused by said reliance. [Schumacher v. State Automobile Mut. Ins. Co.](#), 47 F. Supp. 3d 618 (S.D. Ohio 2014).

To state a claim of actual fraud under Virginia law, a plaintiff must demonstrate: (1) a false representation by the defendant;

(2) of a material fact; (3) made intentionally; (4) with intent to mislead; (5) reliance by the party misled; and (6) resulting damage to the party misled. [William v. AES Corp.](#), 28 F. Supp. 3d 553 (E.D. Va. 2014).

The five elements of a fraud claim are: (1) false representation made by defendant; (2) scienter; (3) intention to induce plaintiff to act or refrain from acting in reliance by plaintiff; (4) justifiable reliance by plaintiff; and (5) damage to plaintiff. [Alvear v. Sandy Springs Toyota, Inc.](#), 332 Ga. App. 798, 775 S.E.2d 172 (2015).

Fraud requires five essential elements: false representation, scienter, inducement, reliance, and injury resulting from reliance on the false representation. West's [Ga.Code Ann. § 9-11-9\(b\)](#). [Cox v. Bank of America, N.A.](#), 742 S.E.2d 147 (Ga. Ct. App. 2013).

For a fraud claim to succeed, a plaintiff must establish nine elements with particularity: (1) statement or a representation of fact, (2) its falsity, (3) its materiality, (4) speaker's knowledge of its falsity, (5) speaker's intent that there be reliance, (6) hearer's ignorance of the falsity of the statement, (7) reliance by the hearer, (8) justifiable reliance, and (9) resultant injury. [Bank of Commerce v. Jefferson Enterprises, LLC](#), 303 P.3d 183 (Idaho 2013).

The elements of a common-law fraud claim when based on a real estate sales disclosure form distill down to (1) a false representation of past or existing facts on the Form, (2) made with actual knowledge of its falsity, (3) which proximately caused the complaining party injury. [Wysocki v. Johnson](#), 18 N.E.3d 600 (Ind. 2014).

To recover for fraud, a plaintiff must prove: (1) a representation, (2) its falsity; (3) its materiality, (4) the speaker's knowledge of its falsity, (5) his intent that it should be acted on by the hearer and in the manner reasonably contemplated, (6) the hearer's ignorance of its falsity, (7) his reliance on its truth, (8) his right to rely thereon, and (9) his consequent and proximate injury. [Brothers v. Winstead](#), 129 So. 3d 906 (Miss. 2014).

The elements of fraud require (1) a representation or, where there is a duty to disclose, concealment of a fact, (2) which is material to the transaction at hand, (3) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred, (4) with the intent of misleading another into relying upon it, (5) justifiable reliance upon the representation or concealment, and (6) a resulting injury proximately caused by the reliance. [Snapp v. Castlebrook Builders, Inc.](#), 2014-Ohio-163, 7 N.E.3d 574 (Ohio Ct. App. 3d Dist. Shelby County 2014).

The essential elements in an action for fraud are: (1) that the act claimed to be fraudulent was the act of the defendant or induced by him; (2) that it was material and false; that plaintiff relied on it and was justified under the circumstances in relying upon it; and (3) that he was damaged because he relied on it. [Sneberger v. Morrison](#), 776 S.E.2d 156 (W. Va. 2015).

[END OF SUPPLEMENT]

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Footnotes

¹ [Little Caesar Enterprises, Inc. v. OPPCO, LLC](#), 219 F.3d 547, 2000 FED App. 0229P (6th Cir. 2000) (applying Michigan law); [Fowler v. SmithKline Beecham Clinical Laboratories, Inc.](#), 225 F.3d 1013 (8th Cir. 2000) (applying Arkansas law); [North Texas Production Credit Ass'n v. McCurtain County Nat. Bank](#), 222 F.3d 800, 42 U.C.C. Rep. Serv. 2d 888 (10th Cir. 2000) (applying Oklahoma law); [Paper, Allied, Chemical and Energy Workers Intern. Union, Local 5-508, AFL—CIO v. Slurry Explosive Corp.](#), 107 F. Supp. 2d 1311 (D. Kan. 2000) (applying Kansas law); [Lapides v. Trabbic](#), 134 Md. App. 51, 758 A.2d 1114 (2000).

² [Taylor v. American Chemistry Council](#), 576 F.3d 16 (1st Cir. 2009) (applying Massachusetts law); [Hinesley v. Oakshade Town Center](#), 135 Cal. App. 4th 289, 37 Cal. Rptr. 3d 364 (3d Dist. 2005); [TechBios, Inc. v. Champagne](#), 301 Ga. App. 592, 688 S.E.2d 378 (2009); [Wheatcraft v. Wheatcraft](#), 825 N.E.2d 23 (Ind. Ct. App. 2005); [Eurycleia Partners, LP v. Seward & Kissel, LLP](#), 12 N.Y.3d 553, 883 N.Y.S.2d 147, 910 N.E.2d 976 (2009); [Business Staffing, Inc. v. Jackson Hot Oil Service](#), 2012 WL 2627533 (Tex. App. El Paso 2012), review denied, (Oct. 12, 2012); [Estate](#)

of Alden v. Dee, 190 Vt. 401, 2011 VT 64, 35 A.3d 950 (2011); Sales v. Kecoughtan Housing Co., Ltd., 279 Va. 475, 690 S.E.2d 91 (2010); Bowens v. Allied Warehousing Services, Inc., 229 W. Va. 523, 729 S.E.2d 845 (2012); Garrison v. CC Builders, Inc., 2008 WY 34, 179 P.3d 867 (Wyo. 2008).

³ Terrebonne Concrete, LLC v. CEC Enterprises, LLC, 76 So. 3d 502 (La. Ct. App. 1st Cir. 2011), writ denied, 75 So. 3d 464 (La. 2011); Anglin v. Anglin, 30 So. 3d 746 (La. Ct. App. 1st Cir. 2009).

⁴ Arete Partners, L.P. v. Gunnerman, 594 F.3d 390 (5th Cir. 2010) (applying Texas law); Aquaplex, Inc. v. Rancho La Valencia, Inc., 297 S.W.3d 768 (Tex. 2009).

⁵ Tijani v. Holder, 628 F.3d 1071 (9th Cir. 2010), cert. denied, 131 S. Ct. 2160, 179 L. Ed. 2d 943 (2011).

⁶ U.S. v. Curry, 461 F.3d 452 (4th Cir. 2006).

⁷ Hanners v. Balfour Guthrie, Inc., 564 So. 2d 412 (Ala. 1990).

⁸ Long Island Sav. Bank, FSB v. U.S., 54 Fed. Cl. 607 (2002), rev'd on other grounds, 503 F.3d 1234 (Fed. Cir. 2007).

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